

## 1. How is the Constitution of India amended? Examine the need for the review of the Indian Constitution.

**Introduction:** Mention Article and provision available to amend the constitution

Part XX of the Constitution of India has only one article that is Article 368 that deals with the amendment of the Constitution. As per this article, Parliament may add, amend or repeal any provision of the constitution as per the procedure laid down for this purpose.

**Procedure to amend Constitution** *(The list is just for your reference. Actually you need to mention only about Article 368 and amendment by simple majority)*

- A constitution amendment bill can be introduced in any house of the parliament. A bill for the purpose of amendment of constitution can NOT be introduced in any state legislature.
- The Ordinance making power of the President can NOT be used to amend the Constitution.
- A constitution amendment bill can be introduced both as a government bill or a private member bill. However, if it's a Private Member, then it has to be examined in the first instance and recommended for introduction by the Committee on Private Members' Bills and Resolutions before it is included for introduction in the List of Business.
- Prior recommendation of President is NOT needed in introducing the constitution amendment bills. Constitution Amendment Bills are not treated as Money Bills or Financial Bills even if they have some provisions related to them.
- A constitution amendment bill must pass in both the houses separately by absolute + special majority {absolute → more than 50% of strength; special → 2/3 of present and voting}.
- If there is a disagreement between the two houses on a constitution amendment bill, there is NO provision of joint sitting to resolve the deadlock.
- The bills which result in some changes in the constitution but passed by simple majority are not deemed to be Constitution Amendments.
- If a bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority.
- Once the bill is passed in both houses, the bill is sent to president for approval. The 24th Amendment Act of 1971 had made it obligatory for the President to give his assent to a constitutional Amendment Bill. Thus, for a Constitution amendment bill, a President can neither withhold his assent nor return the bill for reconsideration.

**Is the power of the parliament to amend constitution is unlimited?**

**No,**

Parliament cannot amend those provisions which form the 'Basic structure' of the Constitution. This was ruled by the Supreme Court in Kesavananda Bharati case.

### Examine the need to review of the Indian Constitution?

*(Need to review Constitution was there ever since Constitution was drafted. Hence quoting the gist of Nehru's statement will give an answer Past-Present linkage)*

Pandit Jawaharlal Nehru while speaking on the Draft Constitution on November 8, 1948 said "The Constitution is after all some kind of legal body given to the ways of Government and the life of the people. A Constitution if it is out of touch with the people's life, aims and aspirations becomes rather empty, if it falls behind those aims, it drags the people down. It should be something ahead to keep people's eyes and minds made up to a certain high mark... Remember this that while we want this Constitution to be as solid and as permanent a structure as we can make it... there should be certain flexibility. If you make anything rigid and permanent you stop a nation's growth, the growth of a living, vital, organic people". Pandit Nehru reiterated this view over and over again on different occasions.

Since independence, constitution has been able to respond to changing needs of socio economic development and parliamentary democracy. However, globalisation, increasing standards of public service delivery, participation in democratic decision making and increasing socio-economic disparities has led to debate for reviewing the constitution.

### Arguments for

1. Promote cooperative federalism in light of rising interstate conflicts over financial, policy decision making, central sponsored schemes and water disputes
2. Justice, social, economic and political by respecting and protecting rights of cultural, religious and linguistic minorities especially poor, in wake of rising conflicts like Muzaffarnagar riots, tribal protests, etc
3. Achieve representative parliamentary democracy especially due to rising criminalization and corruption in politics
4. Strengthen public institutions like CVC, CAG, election commission to promote transparency and accountability in government functioning

5. Separation of powers due to rising conflicts between judiciary, legislature and executive. Ex : Issue of ordinances , Judicial activism

However, provisions under Article 368 provide flexibility of amendment. NCRWC had been set up in this regard.

Thus, constitution should be reviewed to reflect the contemporary developments while maintaining its basic structure.

### **2. Give you views on the right to freedom of religion as enshrined in the Indian Constitution. Do they make India a secular state?**

#### **Introduction:**

India is birth place of many prominent religions including Hindu, Sikhism, Buddhism and Jainism. From the many centuries, people with diverse religious identity are living with each other and enriching its composite culture. After freedom from British freedom, founding fathers of Indian constitution chose to build a nation based on modern ideas of Democracy, liberty, freedom and secularism.

#### **Firstly, you need to mention right to freedom of religion as enshrined in the Indian Constitution**

Though, nowhere in constitution, secularism word is mentioned except in preamble. But the constitution brings the idea of secularism as part of fundamental rights enshrined under article 25 to 28. Right to freedom of Region ensures the people the following –

- Everybody has freedom of their conscience and to profess, practice and propagate the religion as per their wish.
- People are free to manage religious affairs and in establishing religious and charitable institutions.
- People can't be charged of taxation for the promotion of any religion
- Freedom from attending religious instruction

#### **Secondly, Are these rights making India more Secular?**

- Secularism in India does not completely follow the western notion of complete separation of church and state but here emphasis is on 'sarva dharma sambhava' i.e. equal treatment to all religions.
- Indian secularism is a positive concept in contrary to West where State and Religion are completely separated.

## ILP 2017 Mains Mock & Synopsis: SET 2

---

- Whereas in West, the state does not meddle with religious institutions at all, Indian government can legislate on religious matters in the positive interest of society.
- For example, art 25 gives power to govt. to throw open all Hindu institutions to all, thus negating the age old discrimination against scheduled caste Hindus. Similarly, the government can provide aid to religious educational institutions, cannot take property of minority institutions without paying compensation, provides subsidy to haj pilgrims etc..
- The State and the Constitution do not make any difference between any of the religions. Although Article 15 and Article 16 are not available to foreigners but Article 25,26,27,28 are available to the foreigners also. It shows that not only citizens but the outsiders are also allowed to practice any religion.
- India has no official religion Since there is no religion is superior or inferior, all the religions have equal status and all are protected by the state equally. Hence we can say that INDIA IS A SECULAR STATE.

### **3. Bring out the fundamental differences between the Fundamental Rights and the Directive Principles of State Policy. Discuss some of the measures taken by the Union and State Governments for the implementation of Directive Principles of State Policy.**

*Firstly, Bring out the differences btw DPSP and FR ( mentioning 5 quality differences will suffice though u find more info on the differences below)*

The Directive Principles of State Policy differ from the Fundamental Rights in the following respects, though both aim to ensure happiness among common people. The differences are discussed as follows –

*( Pick any five difference sticking to word limit !! )*

- Fundamental Rights are meant for the citizen while Directive Principles of State Policy are meant for the State. They are some socio-economic instructions for the establishment of a welfare State.
- Fundamental Rights are individualistic and meant for individual citizens. On the other hand, Directive Principles of State Policy are socialistic in nature and want to establish equality and justice in the society.
- Fundamental Rights are enforceable in the courts. Individual can move to the court seeking legal assistance if Fundamental Rights are usurped by force. On the other hand Directive Principles of State Policy are not enforceable and no one can go to the courts to compel the State for their proper implementation.
- Fundamental Rights are automatically enforced. While Directive Principles, on the other hand, need legislation for their proper implementation so long as there is no law carrying out the policy laid down in the Directive Principles.



## ILP 2017 Mains Mock & Synopsis: SET 2

---

- Fundamental Rights seek to establish political democracy while directive principles seek to establish social and economic democracy.
- Some Fundamental Rights are positive and some are negative in nature. On the contrary, almost all Directive Principles are positive in character.
- Fundamental Rights are political in character. These rights guarantee Some democratic rights to the citizen. On the other hand contrary, Directive Principles are economic in nature and want to ensure economic security of the people.
- Some Fundamental Rights of the citizens remain suspended during national emergency. But the question of suspension of Directive Principles does not arise during emergency or in any time.
- Fundamental Rights are not absolute and citizens are subject to reasonable restrictions. On the other hand, Directive Principles are not subject to any constitutional limitations. Based on political will the government may or may not implement them
- Fundamental Rights are enforceable by the courts and the courts are bound to declare as void any law that is inconsistent with any of the Fundamental Rights On the other hand, Directive Principles are not enforceable by the courts and the courts can not declare as void any law which in conflict with any of the Directive Principles.
- In case of conflict between Fundamental Rights and Directive Principles, the former gets supremacy in the court. Every legislation made to implement Directive Principles of State Policy is subject to scrutiny of the court to determine whether it is violative of the Fundamental Rights, particularly Article 14 and Article 19.
- Fundamental Rights are more precise and concrete while Directive Principles are of wider significance.

Despite so many differences between two, Fundamental Rights and Directive Principles are closely connected to each other. Both concepts constitute an indispensable part of the Constitution and are fundamental for proper development of our country.

### **Secondly, Measures taken up for the implementation of DPSP: (quote any 2 measures with examples!)**

- To fulfil basic objective, the State has been charged to make effective provisions for securing the Right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want (**Art.-41**).
- The government has enacted social, labour and economic legislations besides industrial, agricultural and taxation policies. For example, The Taxation Inquiry Commission, 1953 –54 was asked to examine the tax structure and to suggest measures to reduce the inequalities of income and wealth and some other related subjects. The industrial Development And Regulation Act 1954 and the establishment of the Monopolies Inquiry Commission in 1965 were aimed to achieve the objective outlined by the Taxation Inquiry Commission.
- For the promotion of cottage industries (**Art.43**), steps have been taken to encourage the masses. Besides the Government has established the All India Handicrafts Board, The All India

Handloom Board, The Small –Scale Industries Board, The Silk Board, The Coir Board etc. for promotion of cottage industries.

- For raising the standard of living (**Art.47**) the Govt. of India adopted the first ever large scale programme called Community Development Project in 1952 for rural re-construction in the field of communication, transport, housing facilities, sanitation, agriculture, education etc. Regarding prohibition of intoxicating drinks and drugs (Art. 47) most of the States has enacted legislation and imposes some restrictions on it
- As to the separation of the executive from the judiciary (**Art.-50**) most of the States have taken legislative measures. Steps have been taken to assist and give free legal aid to needy village people.
- The Government of India has enacted the National Rural Employment Guarantee Act (**MGNREGA**) to ensure hundred days work assistance to rural people which is in conformity to the Right to work enshrined in the Directive Principles of State Policy of the Indian Constitution.
- **Article 40** - Local Governing Institutions (73<sup>rd</sup> & 74<sup>th</sup> Constitution Amendment Act)

#### 4. What are the social and economic consequences of abolishing Child Labour in India? Discuss the constitutional provisions regarding rights of Children.

##### Definition of child labour:

The term “child labour” is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.

##### Firstly, Social and economic consequence of abolishing child labour need to be addressed:

- The presence of a large number of child labourers is regarded as a serious issue in terms of economic welfare. Children who work fail to get necessary education.
- They do not get the opportunity to develop physically, intellectually, emotionally and psychologically. Children in hazardous working conditions are in worse condition.
- Children who work, instead of going to school, remain illiterate which limits their ability to contribute to their own well being as well as to community they live in. Child labour has long term adverse effects for India.
- To keep an economy prospering, a vital criterion is to have an educated workforce equipped with relevant skills for the needs of the industries. The young labourers today will be part of India’s human capital tomorrow. Child labour undoubtedly results in a trade off with human capital accumulation.
- Child labour in India are employed with the majority (70%) in agriculture some in low skilled labour-intensive sectors such as sari weaving or as domestic helpers, which require neither formal education nor training, but some in heavy industry such as coal mining.

## ILP 2017 Mains Mock & Synopsis: SET 2

---

- According to the International Labour Organisation (ILO), there are tremendous economic benefits for developing nations by sending children to school instead of work. Without education, children do not gain the necessary skills such as English literacy and technical aptitude that will increase their productivity to enable them to secure higher skilled jobs in future with higher wages that will lift them out of poverty

**Secondly Constitutional Provisions and also gist on Child labor laws and recent update on Child Labor ( Prohibition & Regulation ) Amendment Bill , 2016 will make answer more comprehensive**

**(Comprehensive Information provided must be used cautiously addressing the demands of the question and not exceeding the word limit!!)**

1. Article 21 A Right to Education- the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State, by law, may determine.
2. Article 24 Prohibition of employment of children in factories, etc. No child below the age fourteen years shall be employed in work in any factory or mine or engaged in any other hazardous employment.
3. Article 39 The State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

### **Child Labour Law in India**

- After its independence from colonial rule, India has passed a number of constitutional protections and laws on child labour.
- The Constitution of India in the Fundamental Rights and the Directive of State Policy prohibits child labour below the age of 14 years in any factory or mine or castle or engaged in any other hazardous employment (Article 24).
- The constitution also envisioned that India shall, by 1960, provide infrastructure and resources for free and compulsory education to all children of the age six to 14 years. (Article 21A and Article 45).
- India has a federal form of government, and child labour is a matter on which both the central government and country governments can legislate, and have.

### The major national legislative developments include the following:

- The Factories Act of 1948: The Act prohibits the employment of children below the age of 14 years in any factory. The law also placed rules on who, when and how long can pre adults aged 15–18 years be employed in any factory.
- The Mines Act of 1952: The Act prohibits the employment of children below 18 years of age in a mine.
- The Child Labour (Prohibition and Regulation) Act of 1986: The Act prohibits the employment of children below the age of 14 years in hazardous occupations identified in a list by the law. The list was expanded in 2006, and again in 2008. The Juvenile Justice (Care and Protection) of Children Act of 2000: This law made it a crime, punishable with a prison term, for anyone to procure or employ a child in any hazardous employment or in bondage.

### Recent Update:

The Parliament approved Child Labour (Prohibition & Regulation ) Amendment Bill , 2016 that allows children under 14 to engage in "Home Based Work " with their families after school hours or during holidays or helps their families in farming and field gathering. it amends child labour act , 1986.

### An amendment in Child Labour Act receives 'Applaud and Criticism': -

#### CHILDREN UPTO 14 YEARS:

- (1) Amendment prohibit employment of children up to 14 years except into Sports, Farming , Field Gathering but only in Non - School hours, if it does not affect their school education.
- (2) Current law prohibits employment of children up to 14 years in specified categories such as Domestic Work, Automobile Workshop, Bidi - Making, Carpet Weaving, Handloom and Power loom industry, Mines and Hazardous Industries.

#### NEW TERM FOR ADOLESCENT:

- (1) Amendments introduce term "ADOLESCENT " for children between 14 to 18 years of age, bars their employment in Hazardous Industries.
- (2) Current Law allows employment of children between 14 to 18 years of age in Hazardous Occupation and processes.



## ILP 2017 Mains Mock & Synopsis: SET 2

---

### **PUNISHMENT FOR EMPLOYERS FOR VIOLATION:**

(1) Amendment calls for stricter punishment for violating employers law, with jail term of 2 month to 6 month and fine of 20000 to 50,000 in case of first offender, and jail of a year to 3 years for second time offenders.

(2) Current law penalises first time offender with jail of three month to one year and a fine between Rs. 10,000 to Rs. 20,000. And for second time offender with jail of Six month to 2 years.

